

EXHIBIT 5

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1
2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
4 **OAKLAND DIVISION**

5 CHASOM BROWN, MONIQUE
6 TRUJILLO, WILLIAM BYATT, JEREMY
7 DAVIS, and CHRISTOPHER CASTILLO,
8 individually and on behalf of all similarly
9 situated,

10 Plaintiffs,

11 v.

12 GOOGLE LLC,

13 Defendant.

14 Case No. 5:20-cv-03664-YTG-SVK

15 **DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINTIFFS'**
16 **INTERROGATORIES SET 9 (NOS. 34-40)**

17 Pursuant to Federal Rule of Civil Procedure 33, Defendant Google LLC ("Google") hereby
18 responds and objects to Plaintiffs' Interrogatories, Set 9 (Nos. 34-40). These objections and
19 responses are made solely for the purpose of and in relation to this action. In addition, the objections
20 and responses set forth in this document are based on Google's knowledge, investigations, and
21 analysis to date. As discovery proceeds, Google may become aware of additional facts or evidence
22 and its analysis of the case may change. Google reserves all rights to supplement and amend its
23 objections and responses accordingly.

24 **GENERAL OBJECTIONS**

25 1. Google objects to Plaintiffs' Definitions, Instructions, and interrogatories to the
26 extent they seek information and/or records that are not reasonably accessible and whose inclusion
27 is not proportional to the needs of the case.

28 2. Google objects to the definition of "browser" as vague and ambiguous to the extent
29 it draws a distinction between "web-based browsers" and "app browsers." All browsers are, by

30 Case No. 5:20-cv-03664-LHK

31 DEFENDANT'S OBJECTIONS AND RESPONSES TO
32 PLAINTIFFS' INTERROGATORIES SET 9 (NOS. 34-40)

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1 definition, web-based and require software to be run on a device, whether that device is a desktop
2 computer or a mobile device. Google will understand the term “browser” as referring to application
3 software that contains a graphical user interface for displaying and navigating between web pages.
4

5 3. Google objects to the definition of “browsing data” as overly broad and unduly
6 burdensome because it combines information pertaining to specific website visits (e.g., “HTTP
7 request,” “hostname”) with basic information about the browser (e.g., “browser type,” “language”).
8 Google further objects to the definition of “browsing data” as vague and ambiguous due to the
9 inclusion of “fingerprint” data (as described in paragraphs 100-104). Paragraphs 100-104 of the
10 Complaint describes “images, pixels, or fonts”—that is neither “fingerprint data” nor data Google
11 uses to fingerprint users. Google further objects to the definition of “browsing data” as vague and
12 ambiguous due to the inclusion of “geolocation data.” Google will treat “geolocation data” as
13 referring to precise latitude and longitude information that is collected from a mobile device.
14

15 4. Google objects to the interrogatories to the extent that they seek information shielded
16 from disclosure by the attorney-client privilege, the work-product doctrine, the settlement privilege
17 and/or any other applicable privilege or protection from discovery.
18

19 5. Google objects to Plaintiffs' Definitions, Instructions, and interrogatories to the
20 extent they conflict with or encompass information and/or records falling outside the scope of
21 discovery under the Federal Rules of Civil Procedure, the local rules of the Northern District of
22 California, or any discovery orders governing this case.
23

24 6. Google's responses to these interrogatories are hereby made without waiving or
25 intending to waive, but rather, to the contrary, by preserving and intending to preserve:
26

27 a. All questions as to the competence, relevance, proportionality, materiality,
28 and admissibility as evidence for any purpose of the information or

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1 documents, or the subject matter thereof, in any aspect of this action or any
 2 other court action or judicial or administrative proceeding or investigation;

3 b. The right to object on any ground to the use of any such information or
 4 documents, or the subject matter thereof, in any aspect of this action or any
 5 other court action or judicial or administrative proceeding or investigation;
 6 c. The right to object at any time in connection with any further response to
 7 these or any other interrogatories; and
 8 d. The right at any time to supplement its responses.

9
 10 7. Google anticipates that future discovery, independent investigation, or analysis will
 11 supply additional facts and add meaning to known facts, as well as establish new factual conclusions
 12 and legal contentions, all of which may lead to additions to, changes in, and variations from the
 13 responses set forth herein. Google reserves the right to modify, supplement, withdraw, or otherwise
 14 alter its responses to these interrogatories in accordance with the Federal Rules of Civil Procedure,
 15 the local rules of the Northern District of California, or any discovery orders governing this case.

RESPONSES TO INTERROGATORIES**INTERROGATORY NO. 34:**

19 Please identify every log and data source that Google reviewed, analyzed, or searched as
 20 part of Google's efforts to conduct a "log analysis of Chrome Incognito" in and around mid-2020.
 21 See, e.g., GOOG-CABR-05280756.

RESPONSE TO INTERROGATORY NO. 34:

23 Google incorporates its General Objections as if set forth fully herein. Google further objects
 24 to this interrogatory as it mischaracterizes the cited document and an analysis performed by a small
 25 number of Google employees. Google further objects to the undefined phrase "every log and data
 26 source that Google reviewed, analyzed, or searched" as overly broad, unduly burdensome, vague,
 27 and ambiguous. For the purposes of this response, Google understands this phrase to refer to the

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1 log sources that Google used to perform the analysis described in GOOG-CABR-05280756. Google
2 further objects to this interrogatory as unduly burdensome to the extent it purports to seek
3 information regarding Google Search Ads because Plaintiffs have expressly limited their
4 purported class to users “who accessed a non-Google website containing Google Analytics or Ad
5 Manager.” Dkt. 136-1 ¶ 192; *see also* June 2, 2021 Hearing Tr. 35:13-16 (discovery “is not carte
6 blanche to all of Google’s systems . . . and it will continue to tie back to the proper definitions of
7 the class”). Google further objects to this interrogatory to the extent it is tailored to seek information
8 protected by the attorney-client privilege, the work product doctrine, or the common interest
9 doctrine, or that is otherwise privileged or protected from discovery.

10 Subject to and without waiving the foregoing objections, Google responds as follows:

11 Google used [REDACTED] in the analysis of Ad Manager browsing traffic
12 described in GOOG-CABR-05280756.

13 **INTERROGATORY NO. 35:**

14 Aside from Google’s mid-2020 “log analysis of Chrome Incognito” (e.g., GOOG-CABR-
15 05280756), please describe in detail any other log-based analysis of Chrome Incognito that Google
16 conducted, including the data sources involved and the results of any such analysis.

17 **RESPONSE TO INTERROGATORY NO. 35:**

18 Google incorporates its General Objections as if set forth fully herein. Google further objects
19 to this interrogatory as it mischaracterizes the cited document and an analysis performed by a small
20 number of Google employees for a specific purpose. Google further objects to this interrogatory as
21 vague and ambiguous as to the phrase “any other log-based analysis of Chrome Incognito that
22 Google conducted,” which is neither self-evident nor defined. As written, this undefined phrase is
23 unintelligible, overly broad, and unduly burdensome because it does not explain, *inter alia*, what
24 constitutes “log-based analysis” or how any such analysis would need to relate to Incognito mode
25 on the Chrome browser in order to be responsive to this request. For the purposes of this response,
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1 Google understands this phrase to refer to other analyses employing the methodology for estimating
 2 or inferring certain Incognito aggregate usage metrics described in GOOG-CABR-05280756, as
 3 applied to Ad Manager. Google further objects to this interrogatory to the extent it is tailored to seek
 4 information protected by the attorney-client privilege, the work product doctrine, or the common
 5 interest doctrine, or that is otherwise privileged or protected from discovery.
 6

7 Subject to and without waiving the foregoing objections, Google responds as follows:

8 Google has not identified information responsive to this interrogatory after conducting a
 9 reasonable search.

10 **INTERROGATORY NO. 36:**

11 For the Class Period, please identify Incognito usage statistics for the USA, broken down by
 12 (1) the number of unique chrome instances within the United States, (2) the number of unique
 13 chrome instances within California that used Chrome Incognito, and (3) the number of unique
 14 chrome instances within the United States that used Chrome Incognito.
 15

16 **RESPONSE TO INTERROGATORY NO. 36:**

17 Google incorporates its General Objections as if set forth fully herein. Google objects to this
 18 request as vague and ambiguous as to the phrases “the number of unique chrome instances” and
 19 “Incognito usage statistics,” which are neither self-evident nor defined. Google further objects that
 20 this interrogatory is overly broad and unduly burdensome because at least Subpart (1) of this
 21 interrogatory seeks information for users who are not included in Plaintiffs’ class definition. Google
 22 further objects to this interrogatory as compound because it includes at least three sub-parts.
 23

24 Subject to and without waiving the foregoing objections, Google responds as follows:

25 (1) [REDACTED]

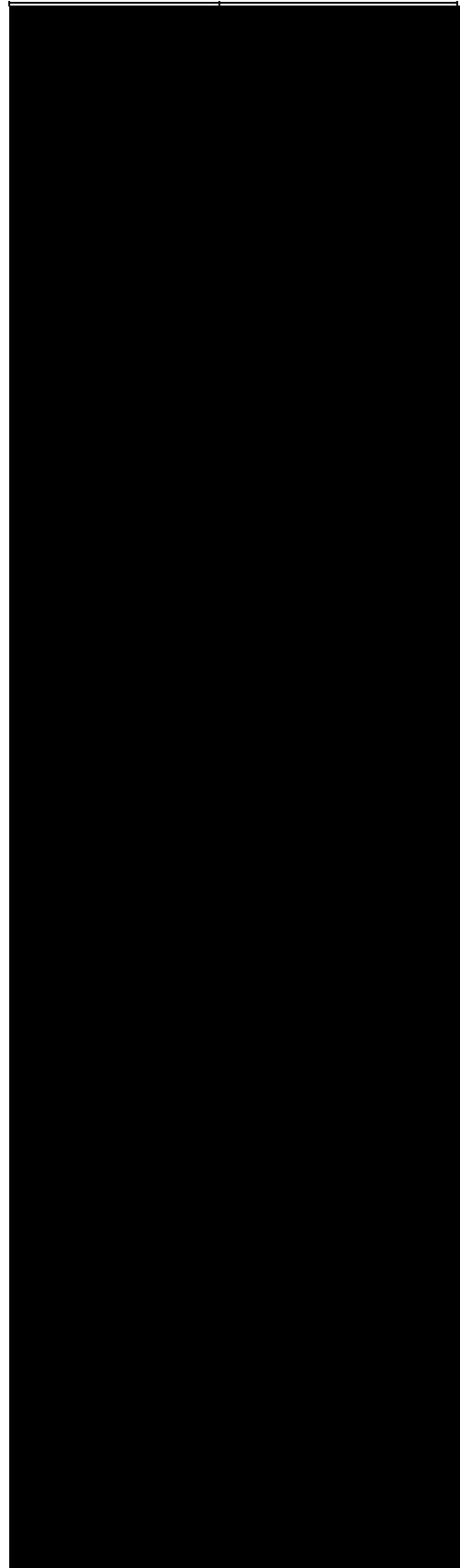
26 [REDACTED]

27 [REDACTED]

28 Based on Google’s investigation to date, that information is set forth below.

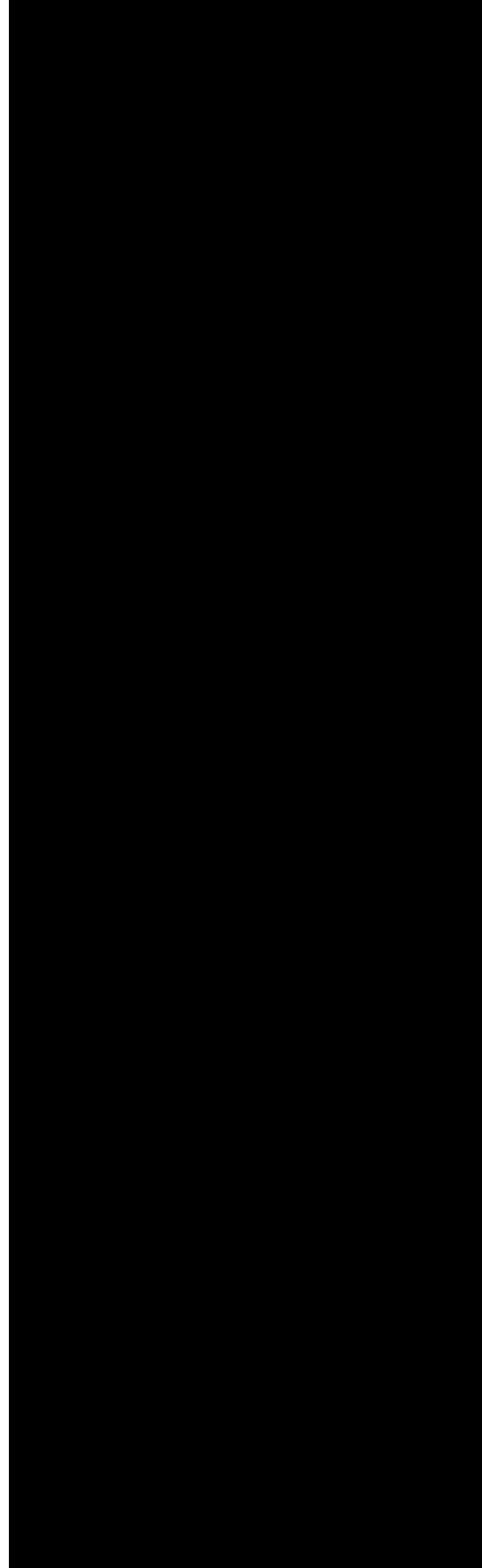
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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY



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Based on Google's

investigation to date, that information is set forth below.

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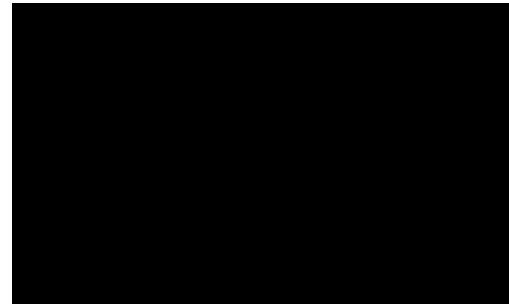
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CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**INTERROGATORY NO. 37:**

Please identify by Bates number any and all surveys regarding users' use or perception of Chrome Incognito that Google intends to rely on for purposes of opposing class certification, moving for summary judgment, or trying the case.

RESPONSE TO INTERROGATORY NO. 37:

Google incorporates its General Objections as if set forth fully herein. Google further objects to this interrogatory as vague and ambiguous as to the phrase "trying the case," which is undefined. For the purposes of this response, Google understands this to refer to documents that Google intends to introduce into evidence at trial. Google further objects to this Interrogatory as premature because it purports to require Google to identify "any and all surveys regarding users' use or perception of Chrome Incognito that Google intends to rely on for purposes of opposing class certification, moving for summary judgment, or trying the case" when (i) Plaintiffs have yet to file a motion for class certification, which is not due until May 26, 2022, Dkt. 377; (ii) Google's opposition to any such motion for class certification is not due until July 14, 2022, *id.*; (iii) Google has yet to file a motion for summary judgment; and (iv) no trial date was been set in this action. Google further objects to the extent this interrogatory seeks expert discovery prior to the deadline set by the Court for such discovery.

Subject to and without waiving the foregoing objections, Google responds as follows:

Plaintiffs' request for Google to identify "any and all surveys regarding users' use or perception of Chrome Incognito that Google intends to rely on for purposes of opposing class

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1 certification, moving for summary judgment, or trying the case” is premature, as Plaintiffs have not
2 yet moved for class certification, no class has been certified, no motion for summary judgment has
3 been filed, not trial date has been set, and Plaintiffs’ motion for class certification is not due until
4 July 2022. As such, Google will not provide a response at this time.
5

INTERROGATORY NO. 38:

6 Please identify and describe all instances during the Class Period that Google is aware of (if
7 any) when so-called “unauthenticated data” was accessed by a bad actor or hacker, within Google
8 or outside of Google, who lacked permission from Google to access the data.
9

RESPONSE TO INTERROGATORY NO. 38:

10 Google incorporates its General Objections as if set forth fully herein. Google further objects
11 to this interrogatory as vague and ambiguous as to the phrase “when so-called ‘unauthenticated data’
12 was accessed by a bad actor or hacker,” which is neither self-evident nor defined. Google further
13 objects to this interrogatory as seeking information that is neither relevant nor likely to lead the
14 discovery of admissible evidence because Plaintiffs’ complaint does not allege any data breaches,
15 does not contain allegations related to Google’s data security efforts, and does not reference any
16 “hack[ing]” of Google’s servers. Google further objects to this Interrogatory to the extent it is
17 tailored to seek information protected by the attorney-client privilege, the work product doctrine, or
18 the common interest doctrine, or that is otherwise privileged or protected from discovery. Google
19 further objects to this interrogatory as overly broad and unduly burdensome because it is not limited
20 to “unauthenticated data” within Google’s possession, custody, or control. For these reasons, this
21 interrogatory is not proportional to the needs of the case, the burden of the proposed discovery
22 outweighs any likely benefit, and Google will not provide a response.
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CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**INTERROGATORY NO. 39:**

If Google's responses to any of Plaintiffs' Requests for Admissions 54, 55, 63, or 75 are anything but complete admissions, please explain in detail why Google denies any part of those Requests for Admissions.

RESPONSE TO INTERROGATORY NO. 39:

Google incorporates its General Objections as if set forth fully herein.

Google further objects to this interrogatory as compound because it includes at least four subparts. Google further objects to this Interrogatory to the extent it is tailored to seek information protected by the attorney-client privilege, the work product doctrine, or the common interest doctrine, or that is otherwise privileged or protected from discovery. Google further objects to this interrogatory as improperly compound because it includes four sub-parts seeking information regarding four different responses to Plaintiffs' Requests for Admission to Google. Google further objects to this interrogatory because, in light of Plaintiffs' improperly compound Interrogatory Nos. 36, 39, and 40, Plaintiffs have exceeded the 40 interrogatory limit ordered by the Court. Dkt. 298 at 2 ("Unless otherwise stipulated or ordered by the Court, a party may serve no more than 40 interrogatories, including all discrete subparts.").

Subject to and without waiving the foregoing objections, Google responds as follows:

Google is willing to meet and confer with Plaintiffs to identify up to two sub-parts of the 22 sub-parts propounded in Interrogatory Nos. 39 and 40 to which Google will respond.

INTERROGATORY NO. 40:

Please explain the factual bases for any and all affirmative defenses that Google has asserted or plans to assert in this case.

RESPONSE TO INTERROGATORY NO. 40:

Google incorporates its General Objections as if set forth fully herein. Google further objects to this Interrogatory to the extent it is tailored to seek information protected by the attorney-client

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1 privilege, the work product doctrine, or the common interest doctrine, or that is otherwise privileged
 2 or protected from discovery. Google further objects to this interrogatory as improperly compound
 3 because it purports to seek the factual bases for at least eighteen affirmative defenses. *See* Dkt. 387
 4 (Google's Answer to Plaintiffs' Second Amended Complaint) at 30-35. Google further objects to
 5 this interrogatory because, in light of Plaintiffs' improperly compound Interrogatory Nos. 36, 39,
 6 and 40, Plaintiffs have exceeded the 40 interrogatory limit ordered by the Court. Dkt. 298 at 2 ("
 7 Unless otherwise stipulated or ordered by the Court, a party may serve no more than 40
 8 interrogatories, including all discrete subparts.").

10 Subject to and without waiving the foregoing objections, Google responds as follows:

11 Google is willing to meet and confer with Plaintiffs to identify up to two sub-parts of the 22
 12 sub-parts propounded in Interrogatory Nos. 39 and 40 to which Google will respond.

14 QUINN EMANUEL URQUHART & SULLIVAN, LLP

16 DATED: January 28, 2022

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PROOF OF SERVICE

LOS ANGELES, CA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in Los Angeles, CA. My business address is 865 S. Figueroa St., 10th Floor, Los Angeles, CA, 90017.

On January 28, 2022, I served true copies of the following document(s) described as

DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINTIFFS'
INTERROGATORIES SET 9 (NOS. 34-40) on the interested parties in this action as follows:

SEE ATTACHED LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I transmitted PDF format copies of the document(s) described above to the e-mail addresses on the attached Service List pursuant to the agreement between the parties to serve discovery, in lieu of other service methods, by email under Fed. R. Civ. P. 5(b)(2)(E) (see Joint Case Management Statement § 8.b, Dkt. 44) and on non-parties pursuant to the Court's August 12, 2021 Cross-use and Discovery Coordination Orders issued in *Brown v. Google LLC*, Case No. 5:20-cv-03664-LHK-SVK (Dkt. 243) and *Calhoun v. Google*, Case No.: 5:20-cv-05146-LHK-SVK (Dkt. 263). The documents were transmitted by electronic transmission and such transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 28, 2022 at Los Angeles, CA.

/s/ Marie Hayrapetian

Marie Hayrapetian

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1 SERVICE LIST

2 Brown v. Google LLC

3 Case No. 5:20-cv-03664-LHK-SVK

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14 *Calhoun v. Google LLC*

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